

Issued: 12/6/2011

EXECUTIVE ORDER

**Establishing Effective
Oversight Over State Agency
Rulemaking**

WHEREAS, the public is best served by clear and concise administrative rules that protect public health, safety, and welfare; promote economic development; protect against officials' abuse of power; promote needed public programs; enhance public understanding of legal requirements; and facilitate the implementation of law; and

WHEREAS, state agencies promulgate administrative rules pursuant to Title 63G, Chapter 3, Utah Administrative Rulemaking Act, to execute statutory mandates; and

WHEREAS, the Legislature often mandates new administrative rules, or changes to existing administrative rules; and

WHEREAS, agencies' continual review of existing rules coupled with a process of careful consideration and assessment for new rules will improve state agencies' responsiveness to the public; and

NOW, THEREFORE, I, Gary R. Herbert, Governor of the State of Utah, by virtue of the authority vested in me by the Constitution and the laws of the State of Utah, do hereby order that:

All executive branch agencies implement the following procedures for promulgating administrative rules in accordance with and in addition to Title 63G, Chapter 3, Utah Administrative Rulemaking Act.

Issued: February 9, 2017

EXECUTIVE ORDER

**Establishing Effective
Oversight Over State Agency
Rulemaking**

WHEREAS , the public is best served by clear and concise administrative rules that protect public health, safety, and welfare; promote economic development; protect against officials' abuse of power; promote needed public programs; enhance public understanding of legal requirements; and facilitate the implementation of law; and

WHEREAS , state agencies promulgate administrative rules pursuant to Title 63G, Chapter 3, Utah Administrative Rulemaking Act, to execute state and federal statutory mandates; and

WHEREAS , the Legislature often mandates new administrative rules, or changes to existing administrative rules; and

WHEREAS , agencies' continual review of existing rules coupled with a process of careful consideration and assessment for new rules will improve state agencies' responsiveness to the public.

NOW, THEREFORE , I, Gary R. Herbert, Governor of the State of Utah, by virtue of the authority vested in me by the Constitution and the laws of the State of Utah, do hereby order that:

All executive branch agencies implement the following procedures for promulgating administrative rules in accordance with and

1. An agency shall write administrative rules that are clear and concise. It shall not impose unnecessary burdens on the economy, on individuals, on public or private organizations, or on local governments. To achieve these objectives, an agency shall develop its administrative rules through a process which ensures that:

- a. there is full opportunity for public participation in the rulemaking process as prescribed by state law;
- b. the need for and purpose of each administrative rule is clearly established and articulated as part of the rule analysis submitted with each notice of proposed rule;
- c. the head of the agency and policy officials exercise effective oversight; and
- d. compliance costs, paperwork, and other burdens on the public are minimized.

2. In addition to the requirements of Section 63G-3-301, each agency shall include as part of the rule analysis the anticipated costs or savings in terms of the fiscal and non-fiscal impacts and burdens a rule may have directly or indirectly to state government, local government, small business, and persons other than small businesses, businesses, or local governmental entities, and shall review this analysis with any board or commission with rulemaking or advisory authority prior to submitting the rule filing;

3. Each cabinet level administrator, or other official of similar responsibility, who answers to the Governor shall designate an administrative rules coordinator and report that person's name to the Division of Administrative Rules as staff changes necessitate.

in addition to Title 63G, Chapter 3, Utah Administrative Rulemaking Act.

1. An agency shall write administrative rules that are clear and concise. It shall not impose unnecessary burdens on the economy, on individuals, on public or private organizations, or on local governments. To achieve these objectives, an agency shall develop its administrative rules through a process which ensures that:

- a. there is full opportunity for public participation in the rulemaking process as prescribed by state law;
- b. the need for and purpose of each administrative rule is clearly established and articulated as part of the rule analysis submitted with each notice of proposed rule;
- c. the head of the agency and policy officials exercise effective oversight; and
- d. compliance costs, paperwork, and other burdens on the public are minimized.

2. In addition to the requirements of Section 63G-3-301, each agency shall include as part of the rule analysis the anticipated costs or savings in terms of the fiscal and non-fiscal impacts and burdens a rule may have directly or indirectly to state government, local government, small business, and persons other than small businesses, businesses, or local governmental entities, and shall review this analysis with the board or commission with rulemaking or advisory authority prior to submitting the rule filing. Each agency shall utilize the analysis tool created by the Governor's Office of Management and Budget.

4. Each administrative rules coordinator, or designee, shall:

a. examine each administrative rulemaking action prepared by an agency within the coordinator's scope of responsibility prior to the action's submission to the Division of Administrative Rules to determine:

i. that the administrative rule contains language that is necessary, and fits within the scope of a rule as defined in Subsection 63G-3-102(16);

ii. that the administrative rule has been drafted using logical, understandable, and concise language to facilitate compliance and enforcement;

iii. that interested parties have been given opportunity to participate in the development of the administrative rule pursuant to Subsection 63G-3-301(3);

iv. that standards reflect consistent and sound public regulatory policies; and

v. that the rule is formatted as prescribed in the current edition of the Division of Administrative Rules' *Rulewriting Manual for Utah*;

b. work with administrators within the coordinator's scope of responsibility to see that written documents meeting the definition of a rule are promulgated as administrative rules pursuant to Utah Code Ann., Title 63G, Chapter 3;

c. assess enacted legislation by June 1 of each year to ensure that new regulatory obligations are discovered and met in a timely manner by appropriate rulemaking action;

3. Each cabinet level administrator, or other official of similar responsibility, who answers to the Governor shall designate and adequately train an administrative rules coordinator and report that person's name to the Office of Administrative Rules as staff changes necessitate.

4. Each administrative rules coordinator, or designee, shall:

a. examine each administrative rulemaking action prepared by an agency within the coordinator's scope of responsibility prior to the action's submission to the Office of Administrative Rules to determine:

i. that the administrative rule contains language that is necessary, and fits within the scope of a rule as defined in Subsection 63G-3-102(17);

ii. that the administrative rule has been drafted using logical, understandable, and concise language to facilitate compliance and enforcement;

iii. that interested parties have been given opportunity to participate in the development of the administrative rule pursuant to Subsection 63G-3-301(3);

iv. that standards reflect consistent and sound public regulatory policies; and

v. that the rule is formatted as prescribed in the current edition of the Office of Administrative Rules' *Rule Writing Manual for Utah* ;

d. send a copy of the notice of proposed rule and the rule analysis required by law to the Governor's Office of Economic Development;

e. recommend revised or, if necessary, new administrative rules to an agency head within the coordinator's scope of responsibility for the purpose of adequately supporting agency action, informing affected persons, and protecting the state and the public from unwarranted litigation and loss; and

f. notify the Division of Administrative Rules of staffing changes in agencies within the coordinator's scope of authority that affect who may file or authorize rules, and who the Division or the Governor's Office of Planning and Budget may contact with questions.

5. The Director of the Governor's Office of Planning and Budget, or the director's designee, shall:

a. review administrative rules for legal authority, policy, and budgetary impacts;

b. assist state entities in their role of defining public regulatory policy;

c. act as a liaison with members of the legislature on administrative rulemaking issues, and assist with the resolution of issues identified;

d. coordinate strategies to resolve regulatory questions;

e. receive and review the rule analysis required by law.

b. work with administrators within the coordinator's scope of responsibility to see that written documents meeting the definition of a rule are promulgated as administrative rules pursuant to Utah Code Ann., Title 63G, Chapter 3;

c. assess enacted legislation by June 1 of each year to ensure that new regulatory obligations are discovered and met in a timely manner by appropriate rulemaking action;

d. send a copy of the proposed rule and the rule analysis required by law to the Governor's Office and the Governor's Office of Economic Development;

e. recommend revised or, if necessary, new administrative rules to an agency head within the coordinator's scope of responsibility for the purpose of adequately supporting agency action, informing affected persons, and protecting the state and the public from unwarranted litigation and loss; and

f. notify the Office of Administrative Rules of staffing changes in agencies within the coordinator's scope of authority that affect who may file or authorize rules, and who the Office and the Governor's Office ¹ may contact with questions.

5. To ensure rules are consistent with statute and policy, the Governor's Office shall: ²

a. review administrative rules for legal authority, policy; ³

b. assist state entities in their role of defining public regulatory policy;

6. Each state agency may obtain assistance from:

a. the Attorney General to ensure that its rules meet legal and constitutional requirement as provided in Subsection 63G-3-201(9),

b. the Division of Administrative Rules for assistance with the rulemaking process as provided in Subsection 63G-3-402(1)(l), and

c. the Governor's Office of Planning and Budget for assistance determining and calculating fiscal and non-fiscal, direct and indirect impacts;

7. State agency directors and department heads shall cooperate with the Governor's Office of Planning and Budget as it conducts an executive review of rules; and the Division of Administrative Rules as it implements filing, publication, and hearing procedures pursuant to Title 63G, Chapter 3.

BE IT FURTHER ORDERED THAT this executive order supersedes executive orders concerning administrative rules issued on December 3, 1979, February 3, 1986, and March 22, 1988.

IN WITNESS, WHEREOF, I have hereunto set my hand and caused to be affixed the Great Seal of the state of Utah. Done at the Capitol in Salt Lake City, Utah, this 6th day of December, 2011.

(State Seal)

Gary R. Herbert
Governor

ATTEST:

Greg Bell
Lieutenant Governor

c. act as a liaison with members of the legislature on administrative rulemaking issues, and assist with the resolution of issues identified;

d. coordinate strategies to resolve regulatory questions and provide consistency among agencies;

e. receive and review the rule analysis required by law.

6. Each state agency may obtain assistance from:

a. the Attorney General to ensure that its rules meet legal and constitutional requirements as provided in Subsection 63G-3-201(9),

b. the Office of Administrative Rules for assistance with the rulemaking process as provided in Subsection 63G-3-402(1)(k), and

c. the Governor's Office of Economic Development ⁴ for assistance determining and calculating fiscal and non-fiscal, direct and indirect impacts,

d. the Office of the Governor's General Counsel for assistance with coordinating rule content and policy;

7. State agency directors and department heads shall cooperate with the Governor's Office ⁵ as it conducts an executive review of rules; and the Office of Administrative Rules as it implements filing, publication, and hearing procedures pursuant to Title 63G, Chapter 3.

8. This order replaces and supersedes Executive Order 13/2011, Establishing

IN WITNESS, WHEREOF, I have
hereunto set my hand and caused to be
affixed the Great Seal of the State of Utah.
Done at the Utah State Capitol in Salt Lake
City, Utah, on this, the 9th day of February,
2017.

(State Seal)

Gary R. Herbert

Governor

Attest:

Spencer J. Cox

Lieutenant Governor

2017/001/EO

¹ "of Planning and Budget' removed

² "Director of the Governor's Office of
Planning and Budget, or the director's
designee" removed

³ " and budgetary impacts" removed

⁴ Replaces "Planning and Budget"

⁵ "of Planning and Budget" removed